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AUG 28 2007

In re Application of :
Marvin A. Ornstein et al :
Application No. 09/305,562 :
Filed: June 8, 1999 :
Attorney Docket No. ORN-3.0-004 :

OFFICE OF PETITIONS

DECISION ON PETITION

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed January 10, 2007, to revive the above-identified application.

The petition is **DISMISSED**.

Any request for reconsideration of this decision must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.137(b)." This is **not** a final agency action within the meaning of 5 U.S.C. § 704.

The application became abandoned for failure to timely pay the issue fee on or before September 15, 2004, as required by the Notice of Allowance and Fee(s) Due mailed June 15, 2004, which set a statutory period for reply of three (3) months. Accordingly, the application became abandoned on September 16, 2004. A Notice of Abandonment was mailed on January 27, 2005.

A grantable petition under 37 CFR 1.137(b) must be accompanied by: (1) the required reply, unless previously filed; (2) the petition fee as set forth in 37 CFR 1.17(m); (3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional; and (4) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) required by 37 CFR 1.137(d). Where there is a question as to whether either the abandonment or the delay in filing a petition under 37 CFR 1.137 was unintentional, the Director may require additional

information. See MPEP 711.03(c)(II)(C) and (D). The instant petition lacks item(s) (1), (2) and (3).

As to item (1), the issue fee is currently \$700. Accordingly, the \$665 issue fee payment received is deficient by \$35.

As to item (2), the statute at 35 U.S.C. § 41(a)(7) requires submission of a fee for revival of an application under the provisions of 37 CFR 1.137(b). Accordingly, as this application currently claims small entity status, a \$750 petition fee is required to revive this application.

Lastly, as to item (3), a statement is required that "the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional."

In sum, a \$35 balance is due for the issue fee, a fee of \$750 is due for the petition to revive, and a statement that "the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional" are required to revive this application. The items noted above must be accompanied by a renewed petition under 37 CFR 1.137(b).

Further correspondence with respect to this matter should be addressed as follows:

By Mail: Mail Stop PETITION
 Commissioner for Patents
 P. O. Box 1450
 Alexandria, VA 22313-1450


By hand: U. S. Patent and Trademark Office
 Customer Service Window, Mail Stop Petitions
 Randolph Building
 401 Dulany Street
 Alexandria, VA 22314

The centralized facsimile number is (571) 273-8300.

Correspondence regarding this decision may also be filed through the electronic filing system of the USPTO.

To expedite consideration, petitioner may wish to contact the undersigned regarding the filing of the renewed petition under 37 CFR 1.137(b).

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3218.


Frances Hicks
Petitions Examiner
Office of Petitions